

Appl. No. 09/775,261

Amdt. Dated May 25, 2004

Reply to Office action of April 21, 2004

REMARKS

This is a full and timely response to the non-final Office Action mailed April 21, 2004. Reexamination and reconsideration in view of the foregoing amendments and following remarks is respectfully solicited.

Claims 1-5 remain pending in the application. Claim 1 has been amended to incorporate the features recited in claim 2. Accordingly, claim 2 has been canceled. No new matter is believed to have been added.

I. CLAIM REJECTION UNDER 35 USC § 102

Claims 1 and 3 were rejected under 35 USC 102(e) as allegedly being anticipated by U.S. Patent No. 6,463,044 (Seo). This rejection is respectfully traversed.

Independent claim 1 has been amended to incorporate the features of claim 2 and now recites a method for optimizing a level of actual quality during a communications session, comprising the steps of, *inter alia*, establishing a desired quality level, based, in part, upon a provider agreement, monitoring an actual quality level of the communications session, determining an average of the monitored actual quality level and whether the average monitored actual quality level exceeds the desired quality level, adjusting the actual quality level to the desired quality level by one of the steps of increasing the actual quality level to the desired quality level of the communications session, if the monitored actual quality level is less than the desired quality level and reducing the actual quality level to the desired quality level, if the monitored actual quality level is greater than the desired quality level, determining whether to increase or decrease fees, based, in part, on the adjusted actual quality level, and generating an adjusted billing statement to reflect the increased or decreased fees.

Seo discloses an apparatus and method for controlling the traffic load of a base station in a mobile communication system. See abstract. Nowhere does Seo remotely teach or suggest determining whether to increase or decrease fees, based, in part, on the adjusted actual quality

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level, and generating an adjusted billing statement to reflect the increased or decreased fees.

Thus, Seo does not teach or suggest at least these features that are recited in Claim 1.

Claim 3 depends from independent claim 1 and therefore, relies on the arguments presented above.

Reconsideration and withdrawal of this rejection is respectfully requested.

II. CLAIM REJECTION UNDER 35 USC § 103

Claims 2, 4, and 5 were rejected under 35 U.S.C. 103(a) for allegedly being unpatentable over Seo in view of U.S. Patent No. 6,512,761B1 (Schuster).

Claims 4 and 5 depend from claim 1 and, thus rely on the arguments presented above. As previously noted, claim 2 was incorporated into independent claim 1 and, thus also relies on the arguments presented above.

Additionally, contrary to the allegations in the Office Action, Schuster does not make up for the deficiencies of Seo. Schuster discloses a system for adjusting or establishing transmission fees based on delay and/or jitter. See Abstract. The cited reference teaches a system that "may determine delay and/or jitter...a decision is made as to whether this delay is more than a predetermined upper threshold. If so, then at block 52, the fee charged for a transmission is decreased. If not, then at block 54, a determination is made as to whether the delay is less than a predetermined lower threshold. If so, then, at block 56, the fee charged for a transmission is increased." Col. 13, ll. 60-67. However, nowhere does Schuster mention, suggest, or teach, at least a step of determining whether to increase or decrease fees, based, in part, on the adjusted actual quality level, and generating an adjusted billing statement to reflect the increased or decreased fees, as recited in amended claim 1. Rather, Schuster teaches adjusting fees based solely on the determined quality level and not on the adjusted actual quality level.

In view of the foregoing, reconsideration and withdrawal of the § 103 rejections is respectfully solicited.

III. CONCLUSION

Based on the above, independent Claim 1 is patentable over the citations of record. The dependent claims are also submitted to be patentable for the reasons given above with respect to the independent claims and because they recite features which are patentable in their own right. Individual consideration of the dependent claims is respectfully solicited.

The other art of record is also not understood to disclose or suggest the inventive concept of the present invention as defined by the claims.

Applicant submits that the present application is in condition for allowance. Favorable reconsideration and withdrawal of the rejections set forth in the above-noted Office Action, and an early Notice of Allowance are requested.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

If for some reason the Applicant has not paid a sufficient fee for this response, please consider this as authorization to charge Ingrassia, Fisher & Lorenz, Deposit Account No. 50-2117 for any fee which may be due.

Respectfully submitted,

INGRASSIA FISHER & LORENZ

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